



**CE Assignment MOU
Performance Report
July 1, 2014 – December 31, 2015**

**Pursuant to 23 U.S.C. 326
State Assumption of Responsibility for
Categorical Exclusions**

Prepared September 2016

UDOT Environmental Services

Background

Pursuant to 23 U.S.C. 326, the Utah Department of Transportation (UDOT) and the Federal Highway Administration (FHWA) have entered into a Memorandum of Understanding (MOU) that assigned to UDOT the authority and responsibility to determine whether a transportation project qualifies as a Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA) (CE MOU). Under this MOU, UDOT's assigned CE determinations, authorities, and responsibilities were limited only to those projects that met the conditions specified in 23 CFR 771.117. UDOT was also assigned FHWA's responsibilities for consultation with all Federal resource agencies and for compliance with all applicable Federal regulations for projects determined to be CEs under 23 CFR 771.117. For CE's processed under this MOU, the State of Utah assumed the legal responsibility for its NEPA decisions, and as such it is subject to Federal court jurisdiction. The original MOU was executed in 2008 and was renewed in 2011 and in 2014.

Stipulation IV(F)(2) of the CE MOU requires UDOT to submit to FHWA self-assessment reports summarizing its performance, including areas needing improvement and quality control efforts. This performance report for the CE MOU covers the period between July 1, 2014 and December 31, 2015.

Purpose

The primary objective of this report is to provide FHWA with a summary of UDOT's performance administering the CE authorities and responsibilities assigned to it under the CE MOU. This report includes the following information:

- Statistical Summary of CE MOU Self-Assessment Reports
- Quality Control Summary: Areas for Improvement and Improvement Measures Taken
- Quality and Timeliness Discussions
- Recommendations

Statistical Summary of CE MOU Semi-Annual Reports

Stipulation IV(F)(1) of the CE MOU requires UDOT to provide semi-annual reports to FHWA on all CE determinations made. Information included in these reports includes: region of the project, project number, project description, 23 CFR 771.117 category, identification of impacts to key resources, location (route, milepost), preparer's name, approver's name, and document approval date. UDOT has met this stipulation and the semi-annual reports are available on the UDOT website at: <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:2053>,

For the current self-assessment reporting period, UDOT has prepared and approved 200 CEs under the CE MOU. Figures 1 and 2 show the number of CEs completed within each UDOT Region for this reporting period. The number of CEs prepared in each region varies; Region 4 prepared slightly more CEs and Region 1 prepared slightly less.

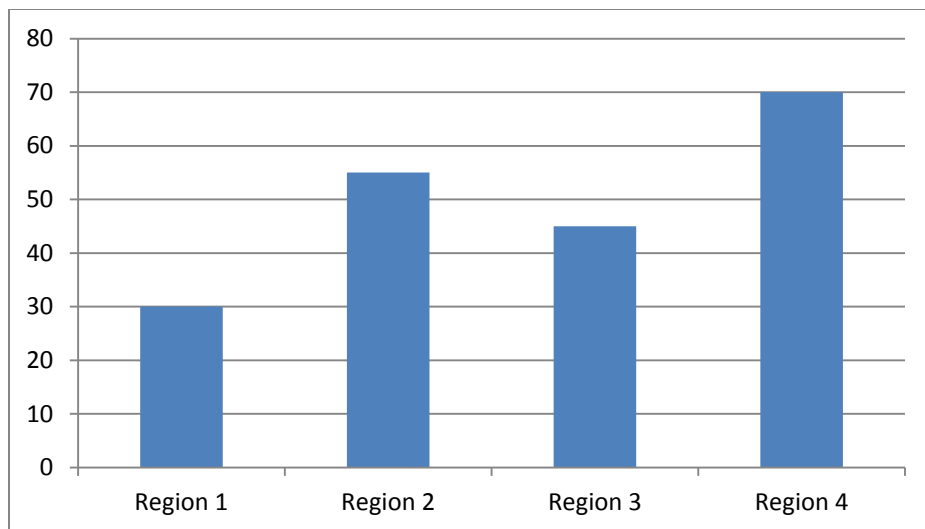


Figure 1. CEs prepared from July 1, 2014 to December 31, 2015, by region.

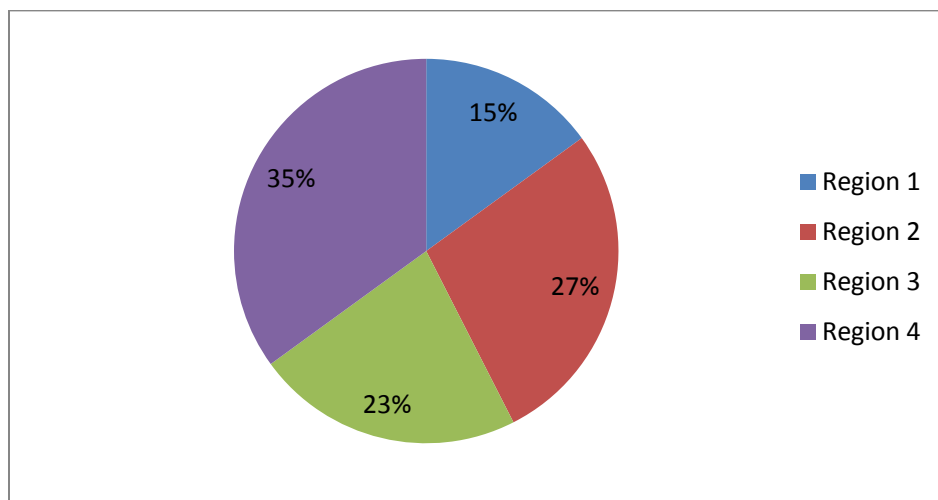


Figure 2. Percentage of CEs completed by each region.

Figures 3 and 4 illustrate the categories of CE projects approved by UDOT under the CE MOU. By far, the most common CE prepared is classified as 23 CFR 771.117(c)(26) [previously (d)(1)] with 64.5%, or 129 of 200 documents. This category includes all highway modernization projects, such as resurfacing, restoration, rehabilitation, the addition of shoulders or the addition of auxiliary lanes (e.g. parking, weaving, turning, or climbing). Other types of projects that were approved by UDOT during the reporting period are listed below by (c) and (d) category:

- (c)(3) – Construction of bicycle and pedestrian facilities
- (c)(7) – Landscaping
- (c)(8) – Installing fencing, signs, pavement markings, or traffic signals
- (c)(21) – Installation of electronic signs and communication systems
- (c)(22) – Projects within the existing operation right-of-way

- (c)(26) – Highway modernization
- (c)(27) – Highway safety or traffic operation improvement projects
- (c)(28) – Bridge rehabilitation, reconstruction or replacement projects
- (d)(4) – Transportation corridor fringe parking facilities
- (d)(13) – A(actions described in (c)(26-28) that do not meet identified constraints

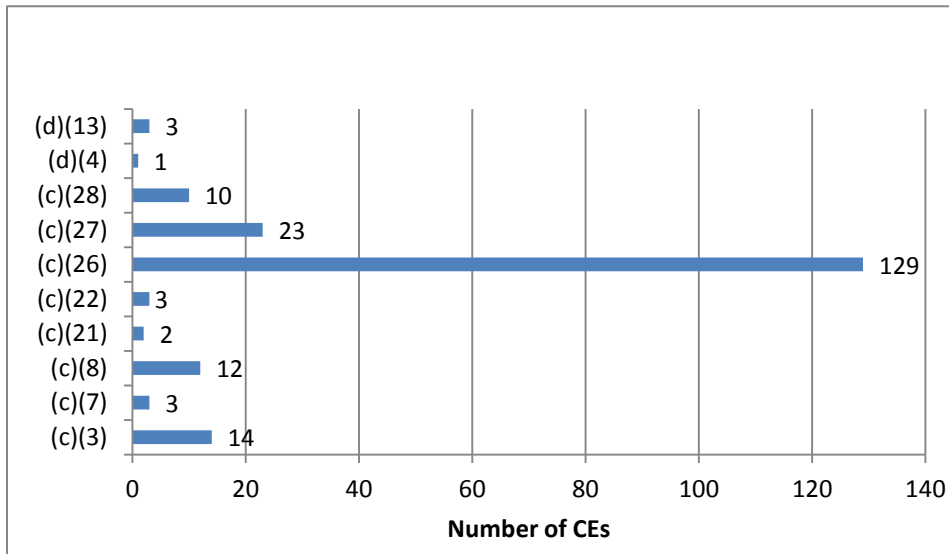


Figure 3. CE distribution by 23 CFR 771.117 category.

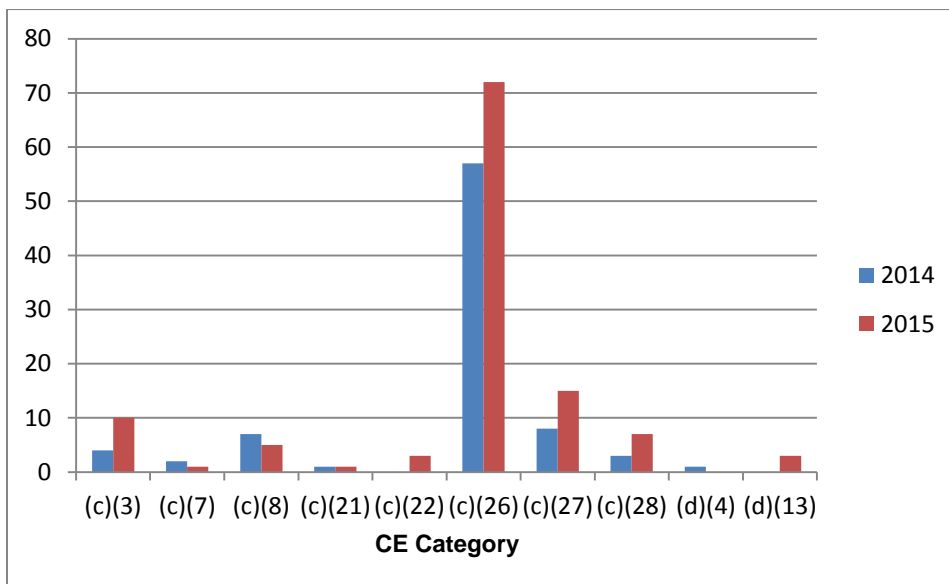


Figure 4. CEs by 23 CFR 771.117 Category by Year.

Additional responsibilities assigned to UDOT under the CE MOU include the responsibility to determine the Section 4(f) impacts of the delegated projects. During the period encompassed by this report, UDOT has made the following types and number of 4(f) determinations:

Table 1. Section 4(f) Determinations, July 2008-June 2014

Type of 4(f) Determination	Number
Individual 4(f)	1
Programmatic 4(f)	1
<i>De Minimis</i> 4(f)	9

Of the projects with Section 4(f) impacts, the majority were *de minimis* determinations. Additionally, during this reporting period, one project required an individual evaluation for greater than *de minimis* uses and one project required a programmatic evaluation for impacts to historic bridges.

Figure 5 shows the number of CEs prepared by UDOT environmental staff compared to the number of CEs prepared by consultants. Approximately 2/3 of all CEs were prepared in-house and approximately 1/3 were prepared by consultants.

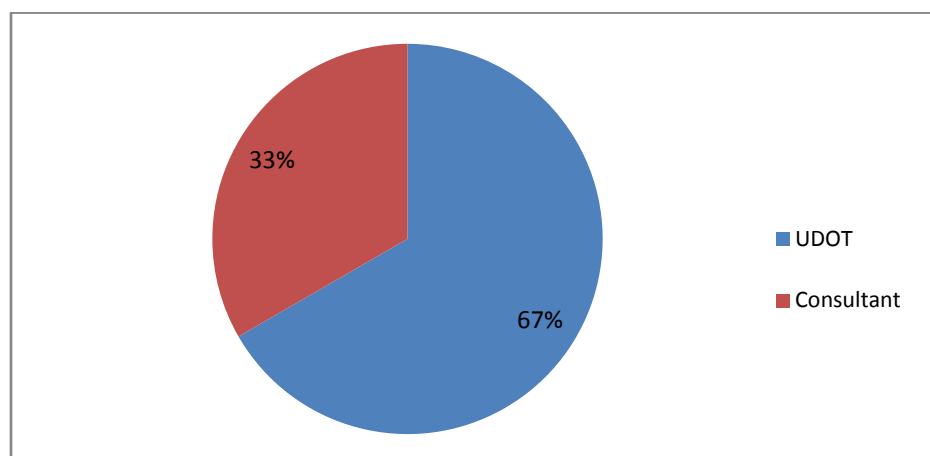


Figure 5. Distribution of CE preparation.

QC Efforts Summary: Areas for Improvement and Improvement Measures

UDOT implements a Quality Control (QC) process consistent with the requirements of Stipulation IV(E) of the MOU. To summarize, each assigned CE must be reviewed by someone who was not the preparer of the CE. UDOT Environmental Manager for each Region must approve the CE; they cannot also be the reviewer. This insures that two reviews take place for each CE before approval. Additionally, UDOT Environmental Program Managers review every CE to ensure the CE was classified correctly, that it was prepared correctly, and that all of the necessary documentation has been uploaded to the UDOT ProjectWise document management

system. Any errors are relayed to the UDOT Region Environmental Manager and are corrected as soon as possible.

As part of UDOT's QC Review Process, errors are tracked and reported internally on a semi-annual basis. As there is no reporting requirement in the CE MOU for this information, it is not included in the Semi-annual Reports to FHWA. The percentage of errors for each semi-annual report is shown in Figure 6. The cumulative error percentage for this reporting period is 17% which is an increase over previous reporting periods.

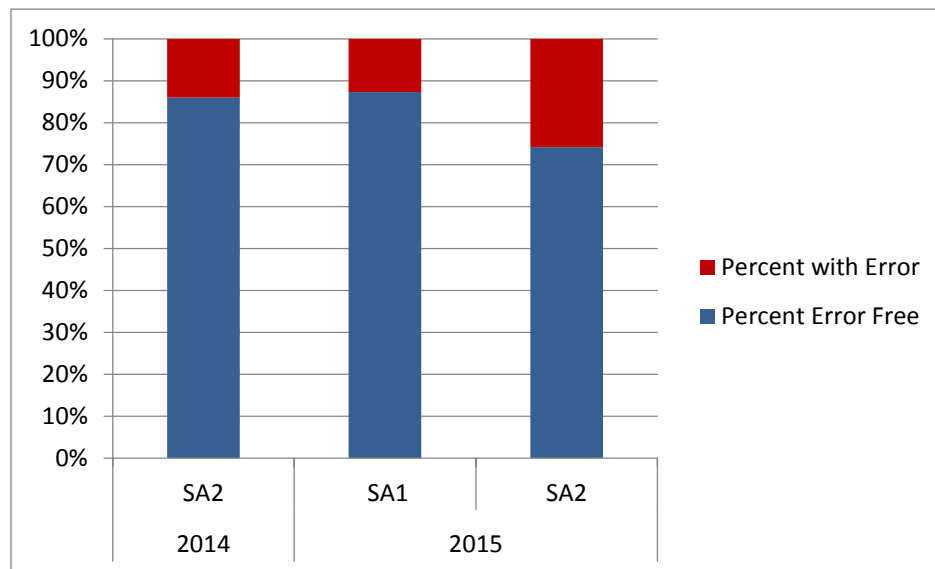


Figure 6. Percentage of errors in CEs.

As part of UDOT's QC reporting, error type is reported by type. There are six types of errors noted:

1. CEs incorrectly approved by a consultant rather than a UDOT Region Environmental Manager or higher.
2. Reporting an incorrect response on the ePM form.
3. Using an incorrect form (from a previous version in ePM).
4. An incorrect or missing 23 CFR 771.117 (c) or (d) classification.
5. A vague purpose and need or project description.
6. The document preparer and reviewer is the same individual.

As shown in Figure 7, the most common errors were misclassifying the CE or entering incorrect responses on the CE form. For all the errors identified, the errors were discussed with the Region Environmental Managers and additional training was provided to the entire Environmental Staff.

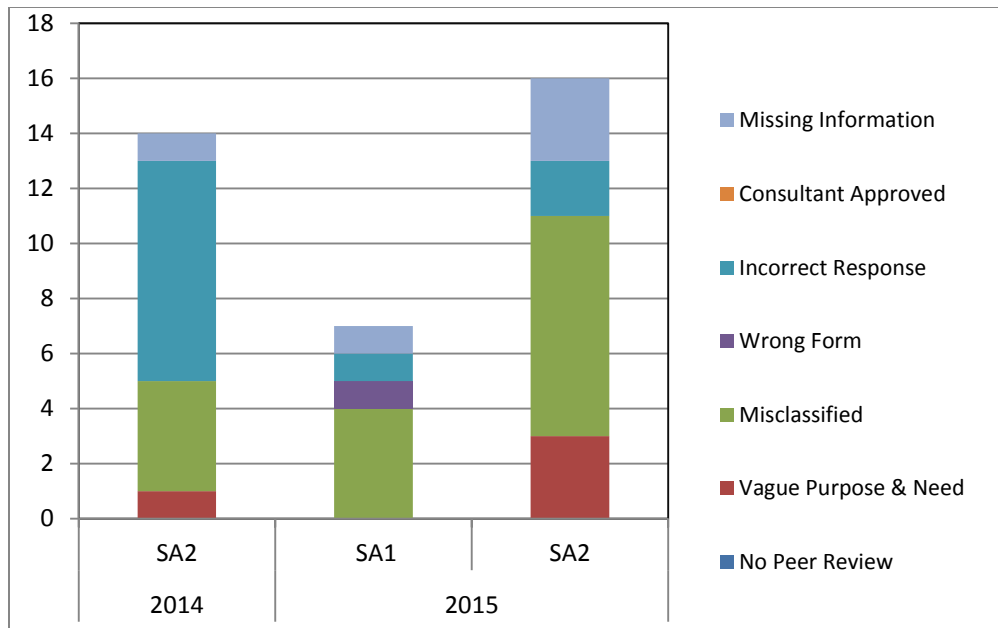


Figure 7. Error type by category of error.

There has been an increase in errors during this reporting period which UDOT Environmental Services is addressing. UDOT Environmental Services has set an overall goal of 5% or fewer errors for all CEs approved under the CE MOU which will be included in the performance plans of all Region Environmental Managers. The Environmental Program Managers (who are both responsible for NEPA oversight) will each mentor two Region Environmental Managers to address any deficiencies and errors in order to prevent future occurrences. UDOT Environmental Services is also developing a statewide master project tracking list to assist the regions with project classifications and to better identify potential resource concerns on projects. Additionally, UDOT has recently consolidated all environmental staff into one organizational unit which will allow better oversight of the NEPA program and increase the implementation of OC procedures.

UDOT Environmental Services plans to increase training to environmental staff on the policies and procedures for implementing the CE MOU and is hoping to provide more formal training, such as NHI and FHWA Resource Center courses. In May 2015, UDOT hosted NHI courses on Advanced NEPA and Section 4(f).

Quality and Timeliness Discussions

As part of the *FHWA Monitoring Review of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* document, six quality measures and three timeliness measures are being qualitatively evaluated to help determine the efficacy of the Section 6004 delegation as part of this report. These measures are:

Quality Measures

1. CE decisions are appropriately and timely documented.
2. CE decisions are factually and legally supportable at the time the decision is made.
3. CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the CE MOU.
4. UDOT has met staffing and quality control requirements of the MOU.
5. UDOT has complied with other State and Federal legal requirements.
6. UDOT has complied with recordkeeping requirements.

Timeliness Measures

1. Time savings associated with UDOT approving CEs instead of the FHWA.
2. Additional staffing hours required from UDOT.
3. Potential time savings for FHWA's environmental staff.

Quality Measures Discussion

For the qualitative evaluation of the Quality Measures, the UDOT is relying on the UDOT Quality Control Form and on the issues that have arisen since the MOU was signed. There is no baseline information for the quality of the CEs, as no quality measures were recorded prior to the CE MOU being signed. As a general assessment, UDOT feels that the overall quality of the CE documents has notably improved as a result of CE Assignment and the QC efforts. Prior to the approval of the CE MOU, the FHWA Utah Division office was responsible for conducting QC efforts per the December 31, 2003 *Agreement between UDOT and FHWA for Environmental Approval Authority for Selected Categorical Exclusion Documents* (2003 CE PA). However, these QC efforts were infrequent and were only conducted on a small percentage of the projects. UDOT's QC efforts under the CE MOU have included all approved CEs, and as a result, the overall quality of the CEs has noticeably improved. Specifically, UDOT feels that the CEs processed under the MOU have clearer purpose and need statements, have better defined project descriptions, and are more consistently correct in answering the questions on the ePM CE form than those prepared before the execution of the CE MOU.

1. CE decisions are appropriately and timely documented

During this reporting period, 16 (8%) of the 200 CEs approved during the reporting period were improperly classified. These projects were correctly identified as CE projects, but had the wrong category of CE selected. A few of these CEs were processed as (c)(26) but had impacts to T&E species and should have been classified as d(13). Others were incorrectly classified to due to accidentally selecting the wrong category from the dropdown menu in ePM. It is worth noting that no EA or EIS types/scopes of projects were submitted as CE projects.

UDOT Central Environmental has provided additional training to all UDOT Environmental Staff on appropriately classifying projects. This training has focused on the new (c)-list categories and the constraints of (c)(26-28). Despite these errors, UDOT feels that it has been successful in making appropriate decisions on CE projects.

2. *CE decisions are factually and legally supportable at the time the decision is made*
During this reporting period, 16 (8%) of the 200 CEs approved had either an incorrect response or missing information. Most of these errors were due to misinterpreting questions related to T&E species, wetlands, and Section 4(f). UDOT Central Environmental has provided additional training to all UDOT Environmental Staff on interpreting the CE form questions and is looking at ways to make the questions clearer on the form. Despite these errors, UDOT feels that the CE decisions have been made appropriately and based on legal and factual information.
3. *CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the CE MOU*
UDOT feels that all decision-making, with regard to which projects should be classified as CEs have been in accordance with 23 CFR 771.117 and the CE MOU, with the exception of the instances mentioned in Section (1) above. UDOT QC efforts only found 16 of the 200 projects (8% of all projects) that were not classified correctly when they were initially submitted and no instances where EA or EIS types of projects were submitted as CEs approved under the MOU. Overall, UDOT feels that the decisions and decision-making has been done appropriately. When questions have arisen, UDOT has consulted with the FHWA Utah Division office to determine the appropriate level of environmental documentation under NEPA.
4. *UDOT has met staffing and quality control requirements of the MOU*
UDOT feels that they have met the staffing and quality control requirements listed in Stipulation (IV)(D) of the CE MOU. UDOT has hired two full-time Environmental Program Managers (formerly classified as the NEPA Oversight Manager) to oversee the implementation of the CE MOU including the reporting and quality control activities. The UDOT Central Environmental Services staff (which consists of four resource specialists and the Environmental Services Director, in addition to the two Environmental Program Managers) and the UDOT Region Environmental staff remain committed to the consistent implementation of the CE MOU including performing quality reviews. Periodic reminders on issues pertaining to the implementation of the CE MOU are discussed at UDOT Quarterly Environmental Staff Meetings. In addition, new environmental staff is educated on the intricacies and procedures of the CE MOU.
5. *UDOT has complied with other State and Federal legal requirements*
Based on the UDOT Quality Control Form, UDOT has not had any issues complying with any other Federal or State legal requirements. UDOT remains committed to performing state and federal consultations such as section 7 of the Endangered Species Act and Section 106 of the Historic Preservation Act as well as preparing consultation packages for FHWA's use in Native American consultation on CE MOU CE projects.
6. *UDOT has complied with recordkeeping requirements*
In March 2009, UDOT instituted the ProjectWise document management database system. All CEs completed since March 2009 have the final CE and all associated documentation stored electronically as a PDF on the ProjectWise system. Further, UDOT prepares and submits Semi-Annual Reports on CE MOU activities for FHWA use and public use (via the web).

Timeliness Measures Discussion

1. Time savings associated with UDOT approving CEs instead of the FHWA

For context in evaluating time savings, it is worth noting that the time required to approve CEs varies. UDOT has tracked review and approval dates as part of the CE Delegation. Most UDOT approved CEs are approved the same day or the day after they are submitted and reviewed. However, some CEs have had an additional time period, ranging from two days to 33 days, between the review date and the approval date. In many instances, the extended approval time applies to Consultant-prepared CEs. Furthermore, UDOT review times are necessary even for Documented CEs that are approved by the FHWA Utah Division, so the requirement for FHWA approval does not preempt the need for a UDOT review period.

The CE MOU allows UDOT to approve all 23 CFR 771.117 (c) or (d) list projects without FHWA review and approval. Prior to the CE MOU, the FHWA Utah Division office did have to approve more CE projects. While there is no baseline data by which to evaluate the time savings that have resulted from the lack of FHWA review on projects approved under the CE MOU, UDOT does have time information for CE projects that FHWA approved in 2007 and Documented CEs that were approved by the FHWA Utah Division in the reporting period.

For the projects completed in 2007 before the MOU and approved by FHWA, the range of time needed to obtain FHWA approval ranged between 1 and 77 days. Since the majority of CEs prepared under the 6004 are approved within one day of being reviewed, a significant time savings is demonstrated. Therefore, having the CE Delegation does save UDOT time in obtaining approval for each CE that it approves under the MOU. The significance of these time savings has not been established. Overall, UDOT is satisfied with the time savings experienced as a result of executing the CE MOU.

For the Documented CEs approved by FHWA since the CE MOU was signed, the time needed to obtain FHWA approval ranged from 1 to 50 working days. The time required for FHWA approval did not adversely impact the project's construction schedule. However, for some projects on a tighter schedule, an extra fifty days would likely impact a project.

2. Additional staffing hours required from UDOT

By administering the CE MOU, UDOT has undertaken additional staffing hours and administrative duties than it had previously performed. UDOT Region Environmental staffs have not noticed a large increase in their workload as a result of the CE delegation. Additional administrative duties that UDOT Environmental Services has undertaken include the QC efforts for every CE prepared, semi-annual and self-assessment reports, and coordination with the UDOT Region Environmental Managers on determining the appropriate "c or d list" category of CE for some projects. It is estimated that the UDOT Environmental Services spends approximately 30 minutes for the QC of each CE approved under the CE MOU, which results in approximately 75 hours of administrative effort annually. Additionally, UDOT Environmental Services averages an additional 30

hours of effort per semi-annual report, which equates to approximately 60 hours of effort annually. Miscellaneous administrative and overhead duties associated with the MOU average approximately 15 hours per month. Assuming an average number of 30 CEs per quarter, UDOT expends over 300 hours per year performing the reporting responsibilities delegated to it under the CE MOU.

Additionally, prior to the signing of the MOU, UDOT estimates that the Environmental Services personnel spent over 300 hours of time preparing the MOU and the associated guidance materials and monitoring plan. A significant time effort was also expended preparing for both renewals of the CE MOU.

Overall, by signing the CE MOU, UDOT has taken on additional duties and has expended additional time administering these duties. However, UDOT feels that the additional time and effort has been worthwhile, due to the improved quality of the CEs and the time savings that have resulted from not needing FHWA approval on as many CE projects.

3. *Potential time savings for FHWA's environmental staff*

When pursuing the CE assignment, UDOT hoped that as an added benefit of executing the CE MOU the FHWA Utah Division office would be able to expend more effort on the preparation and review of active Environmental Assessments (EA) and Environmental Impact Statements (EIS). At this time, we are unaware of data which exists to support or refute this idea, however, in theory a time savings has been realized at FHWA as a result of no longer needing to review/approve CEs that are now prepared under the CE MOU.

Recommendations

UDOT proposes the following recommendations with regard to the CE MOU:

- UDOT recommends meeting with FHWA six months prior to the end of the term of the CE MOU to discuss the renewal and intentions of each party with regard to improvements and modifications to the agreement.
- UDOT recommends FHWA reconsider the need to prepare Semi-Annual or Quarterly Reports of CE Determinations per Stipulation IV(F)(1). To date, UDOT has satisfactorily prepared all required Semi-Annual and Quarterly Reports. UDOT recommends the CE MOU reporting frequency be reduced to once per year and propose completion of an annual report.
- UDOT recommends FHWA reconsider the need to prepare 18-Month Self-Assessment Reports consistent with Stipulation IV(F)(2). UDOT recommends one report, a 30-Month Report, which would coincide with the proposed meeting six months prior to the expiration of the CE MOU, as discussed above.

- UDOT recommends having a discussion on the content to be contained in the Self-Assessment Reports. The information contained in these reports are important, however future reports may need to be modified such that the information presented is relevant to the CE MOU program including: statistical analysis, noted deficiencies (by FHWA), and steps to improve or remedy deficiencies (by UDOT), as well as identify UDOT successes in implementing the CE MOU. The qualitative metrics in the Quality and Timeliness sections should be evaluated and modified as appropriate for future reports.